

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF) EVAN YOUNG FOR A LIMITED-PURPOSE) AQUACULTURE LEASE LOCATED IN) EAST OF LONG ISLAND BLUE HILL BAY,) BLUE HILL, HANCOCK COUNTY, MAINE)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
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On August 31, 2000, Evan Young of Hancock, Maine applied for a limited-purpose (experimental) commercial type, aquaculture lease totaling 1.86 acres in the coastal waters of the State of Maine, located in Blue Hill Bay, east of Long Island, Blue Hill, Hancock County, Maine. The applicant requested the lease for a term of three (3) years for the purpose of cultivating blue mussels (*Mytilus edulis*) using suspended culture techniques.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a limited-purpose lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

A public hearing on this application was held on January 15, 2002 at 1:00 p.m. in Blue Hill. Intervenor status was granted to Don Eley, President of the organization "Friends of Blue Hill Bay"; hereafter referred to as "Intervenor".

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The applicant, Mr. Evan J. Young, provided testimony about his application, background, and his experiences with mussel raft culture and aquaculture. He is hereafter referred to as the applicant.

The applicant testified that he has managed two mussel rafts, similar to those proposed in this application, during the past three years off Hardwood Island on the eastern side of Blue Hill Bay. He seeks a separate site to raise blue mussels and develop into a full time occupation. He stated that separate sites with a maximum of three rafts per site are desired, as opposed to having 6 rafts in one location. The applicant testified that, if the proposed lease is successful and he was to seek a longer term after 3 years, he would not seek an increase in the size at this location. This particular site appears to have water currents that are in the favorable range for mussels and the limited-purpose lease is sought to test this location for growth rates. The applicant testified that the site was selected for it's location - it is not in general view of the mainland and there are no year round residents on the shore of Long Island; it has soft and silty bottom sediments that are not fished heavily by lobster fishers in this area; and it is in the lee of westerly winds or seas by its location approximately 1075' from the southeastern shore of Long Island. In the applicant's opinion, there would be ample room for navigation in the area of the proposed lease, if granted, in addition to an existing lease and another pending lease application. Exhibits 1 & 2.

The applicant testified that the proposed 1.86 acre lease would contain three 40' x 40' tandem rafts. The surface structures would occupy only one-sixth, or 13.5%, of the total surface area within the proposed 135' x 600' area. The remaining area is required to contain the moorings within the lease boundaries. The rafts would be held in place by four 3 – 4 ton granite moorings with a 3 to 1 scope using 1-inch chain and 1½-inch polysteel tackle. The tandem rafts would be connected together using 15' – 20' of 1-inch chain or rope. Each raft would be floated

by three 3' x 40' pontoons connected by a frame of five 40' steel "I" beams. The "I" beams support eighty 3" x 4" wooden crossbeams. The crossbeams support a total of 450 – 500 thirty-five foot long dropper lines. The applicant testified that each dropper line is a ½ inch in diameter rope that has a 6-inch peg per foot placed in the lay of the rope to prevent the mussels from sliding off. If necessary, each raft may have up to a 50' deep, 3 to 6 inch mesh predator net panels hung on each side of a raft, with 400 lb weights at the corner of each panel. The predator nets would be designed with mesh small enough to not entangle seals or sea ducks and heavy enough mesh to not entangle fish. The net panels would be periodically draped across the top of the raft to air dry and remove fouling organisms. The applicant testified that the rafts would be marked with radar reflector buoys and if required by the US Coast Guard night navigation lights.

The applicant testified that access to the proposed site would be primarily from the Pretty Marsh Landing using his trailered 24' Carolina skiff. The site would be checked a minimum of once per week when operational. If granted, the rafts would be "seeded" the first year in the fall and then annually in May and October. A machine, called an "AGUIN" machine, would be used to wrap seed mussels, in densities of 120-400 per foot, onto the rope using a biodegradable cotton mesh, with 6-inch plastic pegs inserted in the rope every foot to prevent the mussels from sliding off. The applicant testified that it takes 3-4 days to seed an individual raft. Seed mussels would be purchased from sources in Maine such as the Tightrope Sea Farm in the Blue Hill salt pond or collected from the proposed site. The mussels would reach harvestable size approximately one-year from seeding. Harvesting would then occur 1-2 days per week by the applicant and one-day per week using a harvest barge owned by Great Eastern Mussel Farms Inc. When the mussels are harvested using the harvest barge the dropper ropes are hoisted and the mussels separated, washed, graded for size and packaged. Mussels harvested by the applicant would be kept in his boat that would be trailered away at the landing. The same would take place with mussels unloaded at the landing from the harvest barge; the packaged mussels would be directly transferred to a truck and taken away.

The applicant testified that the bottom was checked for flora and fauna using a drag that was towed across the 600' length of the proposed lease. The drag indicated soft silty sediments. The topography has a gentle slope and has 60' - 80' of depth at mean low water and 71' - 91' of depth at mean high water. The currents in the vicinity are approximately 8 –15 cm/sec below the surface running north and south. The applicant testified that urchin larvae and kelps might also settle on the dropper lines, which may attract fish near the rafts. Mussels or other organisms that fall to the bottom would become food for starfish, crabs or lobsters.

The applicant testified that the lobster fishing in the area is generally closer to and along the shore of Long Island in shallower water and on firmer bottom sediments. The applicant explained that beach visitors on Long Island travel the area and there are sailing vessels in the area during the summer months. Lobster fishing, recreational fishing and general navigation would be allowed and compatible on the open areas of the proposed lease provided there is no disturbance to the mussels. In the applicant's opinion, there is also ample room to navigate the area if the proposed lease were granted in addition to the existing lease and another pending similar 2-acre mussel raft lease.

The applicant testified that he would be willing to accept a condition requested by the Acadia National Park (ANP) acting superintendent to consult with ANP representative(s) on the proposed lease, if it were granted, regarding noise, light, debris management and confirmation that the proposed aquaculture lease activities would not include commercial use of Long Island, on which the ANP holds a conservation easement. The applicant testified that we would also be willing to reach the same type of agreement with the Town of Blue Hill, which is now a tax-lien landowner on Long Island.

A Department biologist testified regarding observations that he made during a visit at the site on June 7, 2001 and from several other visits to the general area. He testified that he confirmed the location of the proposed corners and distances to the nearest points of land using a survey quality differential global positioning system (dGPS) and software. According to the

biologist's report no houses or docks were observed on Long Island in the vicinity of the proposed lease. The proposed lease would be approximately 1100' from the east shore of Long Island and 462' from the nearest existing lease located due northeast. According to his report there is a minimum of 830 feet of navigable water, ranging in depth from 27' -50' at mean low water, between the propose lease and the island. There would also be at least 460' of navigable water between the proposed lease boundary and the existing lease boundary due northeast. According to the biologist's report no moorings were observed, although he noted that it is possible that the Dunham's Cove and beach area might be used as transient anchorage by recreational boaters. In his opinion, there is adequate room for navigation in the area. The biologist recommended that the applicant consult with the US Coast Guard regarding their marking permit and the necessity for night navigation lighting.

According to the biologist's report the proposed lease falls within an area classified as "open approved" for the harvest of shellfish, by the Department's Public Health, Water Quality Division. The biologist testified that based on his various underwater videos taken in the area the bottom sediments are very soft, which is not the type of bottom preferred by lobsters. It is possible that mussels falling off the raft may firm the bottom, however no detrimental impact is anticipated. The biologist indicated that no recreational fishing was observed during his site visit, although it would be expected to take place in the general area. He observed 10 lobster buoys west of the propose lease site and to the north, well outside of the proposed lease boundaries. According to the biologist's report no conflict was anticipated with the nearest Department of Inland Fisheries and Wildlife (IF&W) ¼ mile boundary for an Essential Habitat for Endangered and Threatened Species (bald eagle nests) located approximately 1.8 miles east (BE 027A) on Bartlett Island and 1.8 miles south on Hardwood Island (BE 246A). Exhibit 3.

The intervenor testified that his organization has concerns about the use of Blue Hill Bay and its development. Particularly, their interest is in controlling the use and access, on and around, the area of Long Island on which the ANP holds a conservation easement. Concern

was expressed, in particular, for protection of the beaches and coves on Long Island including Dunham Cove, Fogg Cove and a beach referenced near the “Hub” for recreational use and aesthetic value. The intervenor testified that these beaches and coves have seen a dramatic increase in use over the past few years. The intervenor objected that the lease laws allow the granting of leases incrementally, with possible cumulative affects of additional leases that may be granted, instead of through a program that would determine what uses would be allowed under a comprehensive bay management plan. The intervenor testified that the approximate 1000' distance of the proposed lease from the shore of Long Island is a sufficient distance for navigation. He testified that he has observed recreational fishing and at least 100 lobster buoys within a few hundred yards of the proposed site. The intervenor requested that the applicant consider relocating the proposed lease some distance north, away from Dunham’s Cove. Distances from 1000' to a half-mile were suggested.

Two area residents testified in opposition to the proposal. One resident disagrees with the lease statutes similar to the intervenor’s concerns and indicated that land use regulations should be applied to use of Maine’s territorial waters. Another resident testified that the proposed lease and its proximity to Dunham’s Cove would spoil the opportunity for Town of Blue Hill to develop Long Island’s shores and coves for commercial recreational development through mooring fields, similar to Acadia National Park, as a revenue source for the Town.

Two leaseholders spoke in favor of the application and offered supporting testimony on the applicant’s personal character and capability as a good businessperson in the community. It was pointed out that there is a clear dichotomy in the opinions expressed on any future development by the Town of Long Island, noting the comparison of “forever wild” versus “commercial development” and it was also pointed out that a three-year 1.86 acre propose lease should not be caught in the middle of this debate.

At the conclusion of the hearing, by agreement of the parties, the record was held open to allow the applicant to consider the possibility of submitting a revised application in a more

northerly location in lieu of this application. However, a letter received on February 22, 2002 from the applicant indicated that he wished to proceed with this application, not a revised version, and that he had spoken directly with the intervenor on this matter. The application wrote that he would consider relocating the site, if granted, at the conclusion of the experimental 3-year term.

Findings of Fact

The proposed lease is located in approximately 60' - 80' of depth at mean low water. It is located approximately 1100' east of the southeastern end Long Island and, according to the charts in the biologist's report, over a mile west of Bartlett Island due east. According to the biologist's report there is a minimum of 830 feet of navigable water, ranging in depth from 27' - 50' at mean low water, between the propose lease and the island. The distance measurements are based on geodetic coordinates acquired by the Department's biologist using a survey quality dGPS and chart in the biologist's report. No moorings were observed within the proposed lease or along the shore of Long Island according to the biologist's report. Based on the above, I find that the proposed lease will not unreasonably interfere with the ingress and egress of riparian owners.

According to the applicant, intervenor and Department's biologist the area is navigated by recreational boaters and lobster fishers tending their traps set along the island shore. According to the biologist's report the proposed lease is located such as to allow a minimum of 830 feet of navigable water, ranging in depth from 27' - 50' at mean low water, between the propose lease and Long Island. According to the biologist's report there would be approximately 1100' distance at mean low water due west to Long Island and based on the chart in his report, at least a mile due east to Bartlett Island. According to the applicant lobster fishing, recreational fishing and boating would be allowed on the open areas of the lease. Based on the testimony and evidence, I find that the lease will not unreasonably interfere with navigation in the area, given in the evidence and testimony of the applicant, the intervenor and the biologist that there would be ample room to navigate the area.

The nearest existing aquaculture lease is located due north-northeast at a distance of approximately 462' from the proposed lease site. The proposed lease site is located in an area classified by the Department as "open approved" for the harvest of shellfish. The proposed lease is characterized as having a silty soft mud bottom that is not preferred bottom by lobster. According to the biologist's report and testimony, the proposed site and general area consists of barren mud. According to the applicant, the intervenor and the biologist, the primary nearby commercial fishing is for lobsters. The applicant testified that lobster fishing, recreational fishing and boating, and dragging would be allowed on the open areas of the lease site. The maximum surface area occupied by 3 rafts would be 40' – 160'. The remaining acreage would be used to accommodate the moorings. Harvest activities would take place after the first year for growing the mussels using a harvesting barge once per week and manually the applicant 1 – 2 times per week. Based on the testimony and evidence, I find that the lease will not unreasonably interfere with fishing, aquaculture leases, or other uses of the area given the limited use of the proposed site for lobster fishing or other fishing and the credible testimony by the Department's biologist that there is ample room to circumnavigate the proposed lease.

The proposed lease site is characterized as deep, nearly barren, soft mud. The mussels proposed to be raised would be purchased from indigenous nursery sources in Maine. The use of seed mussels dragged from the wild was not requested or suggested. Bottom planting of mussels was not requested. The proposed lease has adequate water depths and other favorable characteristics to accommodate the proposed activities. According to the biologist's report the propose lease is not located within or near any regulated habitats by the Department of Inland Fisheries and Wildlife. Based on this evidence, I find that the proposed lease activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

The seed mussels would be obtained from the site or from a nursery source located in Maine. Dragged seed mussels would not be used. Based on this evidence, I find that there is an available source of blue mussels.

According to the application and the Department biologist's report, the proposed lease would not be located within 1000' or near any public docks/facilities in the area. The primary municipal facility that the applicant would utilize to gain access would be located in Pretty Marsh. The applicant testified that he would be willing to accept a condition to consult with the ANP and the Town of Blue Hill officials regarding noise, light, debris management and no commercial use of Long Island prior to start-up. Based on the evidence, I find that the proposed lease will not unreasonably interfere with public use or enjoyment and that the site is not located within 1,000' of any municipally, state or federally owned beaches, parks, or docking facilities. Satisfactory agreements with the ANP officials and Blue Hill Selectmen shall be provided to the Aquaculture Administrator prior to start-up of any aquaculture activities.

Conclusions of Law

Based on the above findings, I conclude that:

1. the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. the aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. the aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. the aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. the applicant has demonstrated that there is an available source of blue mussels to be cultured for the lease site; and
6. the aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities

meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

Decision

Based on the foregoing, the Commissioner grants the requested limited-purpose commercial lease of 1.86 acres (135' by 600') to the applicant for a period of three (3) years from the date of this decision for the purposes of cultivating blue mussels using a 3 raft system for suspended cultivation, as described in the record. The applicant shall pay the State of Maine rent in the amount of \$50 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$5,000 conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. fishing and navigation is allowed on the open areas of the lease;
2. all marking shall be in accordance with U.S. Coast Guard and Department of Marine Resources requirements;
3. the lease holder will clear all lobster gear that becomes tangled with his equipment when the owner identifies his equipment to the leaseholder;
4. the applicant shall reach an agreement with ANP officials on night lighting other than lighting required by the U.S. Coast Guard, noise, debris management and non-commercial access of Long Island;
5. the applicant shall reach an agreement with the Blue Hill Selectmen on the same items in 4 above; and
6. copies of the agreements under conditions 4 and 5 shall be provided to the Aquaculture Administrator, in writing, prior to start-up of any aquaculture activities.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources